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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 500

FENIX and SCISSON, INC., a Corporation,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF BY PETITIONER TO THE MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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This Reply Brief is limited to one item of new matter raised by The Memorandum For The United States In

Opposition, not treated in the Petition For Certiorari. At Page 6 of the Memorandum For The United States In Opposition, numbered Paragraph 4, the respondent states that the petitioner has no standing to raise the question of the correct construction of Section 382 of the Internal Revenue Code of 1954, since the petitioner failed to object to the instructions and interrogatory given to the jury by the District Court. This statement is erroneous. The petitioner did object to the instructions given in this regard in the District Court (R. 275). In addition, neither the interrogatories nor the instructions submitted to the jury contained material which is inconsistent with the position of the petitioner (R 20-21).

Furthermore, even if the petitioner had failed to object to the instructions of the District Court, such failure to object is of no consequence at this juncture. Having been the prevailing party in the District Court on all issues, the petitioner was not prejudiced by the trial court's judgment and there was no method for it to allege on appeal that any error had been committed by the trial court (36 CJS, Federal Courts, Section 289, Page 806). As this court has stated, a successful party in the District Court may sustain its judgment on any ground that finds support in the record. *Jaffke* v. *Dunham,* 352 U.S. 280 (1957). Whatever the situation might have been had the petitioner been the losing party in the District Court, such rules have no application here since the petitioner was the prevailing party in the District Court.

CONCLUSION

For the reasons stated in the Petition For Certiorari and in this Reply Brief, the said Petition should be granted.

It is submitted that the Memorandum In Opposition is based upon untenable grounds.

Respectfully submitted,

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